IN THE HIGH COURT OF JUDICATURE AT MADARS

DATED: 14/09/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.26265 of 2004
and
WPMP No.31925 of 2004

The Government of Tamil Nadu
Represented by its Secretary
Home Department
Fort St. George
Chennai 600 009. .. Petitioner

-vs-

1. The Secretary
Review Committee on POTA
Room No.246, Vigyan Bhavan Annexe
New Delhi

2. R.R. Gopal @ Nakkeeran Gopal

3. A.Kamaraj
Associate Editor
Nakkeeran
105, Jani Jahankhan Street
Royapettah
Chennai 600 014.

4. S.Ramanathan .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records on the file of the first respondent ending with the order dated 11.9.2004 of the first respondent and quash the same.

!For Petitioner : A.L.Somayaji
Additional Advocate General
Assisted by
Mr.S.Venkatesh,
Special Government Pleader

Mr.C.Manishankar,
Special Public Prosecutor

Mr.S.Jayakumar, Additional PP

^For Respondents : Mr.Shanmugasundaram,
Senior Counsel
for M/s.P.T.Perumal
for RR2 to 4

:ORDER

With the consent of both the parties, the writ petition itself is taken up for disposal.

2. Invoking the writ jurisdiction of this Court, the petitioner State has brought forth this writ petition seeking a writ of certiorari to call for the records of the first respondent Review Committee on POTA dated 11.9.2004 and quash the same.

3. This Court has heard Mr.Somayaji, learned Additional Advocate General, appearing for the petitioner, and also Mr.Shanmugasundaram, Senior Counsel, appearing for the respondents 2 to 4, and perused the affidavit in support of the writ petition.

4. Admittedly, the second respondent herein moved a bail application before the Special Court in Crime No.1/2003, which was dismissed on 4.8.2003. Thereafter, he challenged the said dismissal order before this Court in C.A.No.1219/2003, wherein this Court granted bail to him on 19.9.2003. It is not in dispute that the State filed a Special Leave Petition before the Supreme Court in Crl.Appeal No.1235/2003, and the Supreme Court set aside the judgment of this Court on 26.9.200 3. Pursuant to a complaint by the respondents 3 and 4 herein against the arrest of the second respondent, show cause notices were issued to the State by the Review Committee on POTA as to whether it was a fit case for proceeding against the second respondent. The State filed its objection on 2.12.2003. Thereafter, the petitioner has moved this Court by way of a writ petition in WP Nos.35749 and 35750 of 2003 seeking for a writ of prohibition restraining the first respondent herein from proceeding further in the matter. In the said writ petition, this Court had issued directions to the Review Committee to first decide the preliminary objections filed by the State. It remains to be stated that the Supreme Court upheld the validity of POTA in its judgment dated 16.12.2003 reported in (2004) 9 SCC 580. The preliminary objections filed by the State were over-ruled by the Review Committee on 23.1.2004, and the writ petition filed by the State against the order of the Review Committee, was disposed of on 4.2.2004, and the Special Leave Petition was also rejected by the Apex Court on 8.3.2 004. On 16.2.2004, the petitioner State filed the entire documents relating to Crime No.1/2003 before the Review Committee as per its directions. The Supreme Court, while considering the SLP (Crl.)Nos.5668 -5669/2003, filed by the State, directed the first respondent to consider the case of the second respondent and give its report by 31.8.20 04, and extension of time, sought for, was also granted till 30.9.200 4. The writ petition filed by the second respondent in Writ Petition (Crl.) 56/2003 was disposed of by the Supreme Court, wherein a direction was given that the interim order dated 16.6.2003, by which the State was directed not to file the charge sheet, would continue to remain in operation for a period of six weeks. On hearing the submissions on the question of supply of documents, the Review Committee on POTA issued

directions, which are being challenged in this writ petition.
5. The learned Additional Advocate General would submit that the order of the first respondent is contrary to law, violative of principles of natural justice and without jurisdiction; that the power exercised by the first respondent under Sec.60 of POTA is neither judicial nor quasi-judicial, but only administrative; that it is obligatory on the part of the administrative authority to assign and communicate the reasons for their conclusion; that in the instant case, the first respondent has stated that the reasons for conclusion would follow in due course, which is nothing but total abdication of its legal obligation; that a perusal of the order dated 11.9.2004 would go to show that it does not state as to how such conclusions were arrived at; that it is pertinent to note that the accused is not entitled to the copy of the statements under Section 161(3) of the Cr.P.C. and other documents before filing of the final report under Sec.173(1) of the Cr. P.C.; that the Review Committee, which is not a Court, cannot deviate from the procedure prescribed in the Cr.P.C., especially when the provisions of POTA are governed by the provisions of the Cr.P.C.; that the scope for exercise of power by the first respondent can, at best, be only administrative in nature; that the first respondent cannot interfere with the course of investigation; that the first respondent does not have the jurisdiction to call for the statements of the witnesses, case diaries, police diaries, etc.; that at this stage, the accused cannot claim any right to be heard, and for these reasons, the order of the first respondent is liable to be quashed.
6. In support of his contention, the learned Additional Advocate General relied on the following decisions: (1) 1988 L.W. (CRL.) 503 and (2) (2004) 1 SCC 547.
7. Countering to the above contentions, the learned Senior Counsel for the respondents 2 to 4 would argue that the direction of the Review Committee on POTA are well within its powers and jurisdiction; that as per Sec.30 of POTA, the second respondent is entitled to have the copy of the documents relied on by the State; that he should be made known of the accusations made and also the materials, upon which the accusations are based, and hence, the copies of all the documents relied upon by the State should be furnished to him. Added further the learned Senior Counsel that the denial of the copies of the said documents would be against the principles of natural justice; that whenever any citizen is detained under any other enactment like Preventive Detention Act, he is to be furnished with all the copies of the documents and statements recorded from the witnesses, enabling him to understand the accusations made against him and the basis therefor also; that equally, the second respondent detained under the provisions of POTA cannot be denied the copies of the same; that the Review Committee after appraising both factual and legal positions, has directed the State to furnish copies, and hence, the order of the first respondent has got to be sustained.
8. In support of his contentions, the learned Senior Counsel relied on the following decisions: (1) (1978) 1 SCC 248; (2) (1978) 1 SCC 40 5; (3) (1981) 1 SCC 664; (4) (1998) 6 SCC 651; (5) (2000) 10 SCC 373; and (6) (2002) SCC CRL. 714.
9. The impugned order of the first respondent Review Committee on POTA runs as follows:

"Having heard at length the learned Counsel for the parties on the plea of

privilege raised by the State of Tamil Nadu regarding supply of copies of material to the opposite party, the Review Committee gives the following directions:
1. The Government of Tamil Nadu shall supply to the opposite party a set of the documents, statements, etc. on which it proposes to rely for prosecution of R.R. Gopal @ Nakkheeran under Section 4 POTA, subject to the following directions.
2. The Government of Tamil Nadu is permitted, for purposes of protection of witnesses, to suitably substitute the names addresses and description of witnesses by dummy names.
3. The set of documents thus prepared shall be supplied by the Government of Tamil Nadu to the opposite party by 14th September 2004.
4. One set of documents so supplied to the opposite party shall be submitted by the Government of Tamil Nadu, in the Office of the Review Committee, also by 14th September 2004.
5. The Government of Tamil Nadu shall also supply, in sealed cover, a list containing names, addresses and description of the witnesses, and their corresponding dummy names, along with the set of documents mentioned in direction No.4 above.
6. The detailed reasons for these directions shall follow in due course.
7. The case shall be taken up for further hearing, on day-to-day basis, starting at 11 a.m. on 16th September 2004, in the Committee room 'C' at Vigyan Bhawan, New Delhi."

10. As could be seen above, the State as petitioner, has come before this Court to quash a direction, issued by the Review Committee on POTA, as extracted above, directing the petitioner State to furnish the documents to the second respondent herein, pending the enquiry before the Review Committee on POTA. In the instant case, quite evident it is that both the parties have approached the Hon'ble Apex Court for directions then and there, and the Apex Court has also passed orders thereon. Thus, the Apex Court is seized of the matter. In such circumstances, without going into the merits or otherwise of the rival contentions put forth before this Court, this Court is of the considered opinion that it would not be proper on the part of this Court to pass any order or issue any directions in this regard. Therefore, this Court cannot grant the relief as asked for by the State in this writ petition. Accordingly, this writ petition is dismissed at the admission stage itself. No costs. Consequently, connected WPMP is also dismissed.

Index : yes
Internet: yes

To:

The Secretary
Review Committee on POTA
Room No.246, Vigyan Bhavan Annexe
New Delhi

nsv/